IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION Nos. : 20707 of 2002 & 11484 of 2003

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W.P.No.20707 of 2002:

Between:

M/s. Tajmahal Hotel, rep. by its Prop. B.Chandrashekar Rao,
S/o late B.Sundar Rao, O/o 4-1-999 and 4-1-1000,
Abids Road, Hyderabad.

..... PETITIONER

AND

1 The Managing Director, Hyderabad Metropolitan
Water Supply & Sewerage Board, Goshamahal, Hyderabad.
2 The Managing Director, Single Window, Hyderabad
Metropolitan Water Supply & Sewerage Board,
Kairatabad, Hyderabad.
3 The Manager (E) O & M, Div-IV, Sultan Bazar, Hyderabad.
4 The General Manager (E) O & M, Div-IV, Red Hills, Hyderabad.
5 B.Venkat Rao, s/o late Sundar Rao, R/o 4-1-1000/C, Abids, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order more particularly one in the nature of writ of Mandamus by declaring the action of the respondent No.2 in issuing the sanction vide letter dt.12.9.2002 who is not competent enough and without following the due process of law, is as illegal, arbitrary, unconstitutional.

Counsel for the Petitioner: MR.A.L.RAJU

Counsel for the Respondent No.1: Smt.M.Venkatesdwari.

For Respondent Nos.2 to 4 : None appeared.

Counsel for Respondent No.5: MR.T.SURYA SATISH

WRIT PETITION NO : 11484 of 2003

Between:

Mr.Venkat Rao, S/o late Sri B.Sunder Rao,
R/o 4-1-1000, Abids, Hyderabad.

..... PETITIONER

AND

1 Hyderabad Metropolitan Water Supply & Sewerage Board,
Goshamahal, Hyderabad, rep. by its Managing Director.
2 The General Manager, Single Window, Hyderabad Metropolitan Water Supply & Sewerage Board, Khairtabad, Hyderabad.
3 Manager (E) O & M, Div-IV, Sultan Bazar, Hyderabad.
4 The General Manager (E) O & M, Div-IV, Red Hills, Hyderabad.
5 Mr.B.Chandra Sekhar Rao, S/o late B.Sunder Rao,
R/o 4-1-1000/C, Abids Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ, order or direction preferably a writ in the nature of Mandamus declaring the action of the official respondent Nos.1 to 4 in re-shifting the two 1 inch water connection from premises bearing No.4-1-1000/C, Abids Road, Hyderabad, on 7/6/2003 as illegal, arbitrary and violative of Article 14 of the Constitution of India and consequently direct the official respondent Nos.1 to 4 to forthwith restore the two 1 inch dia water connections to premises bearing No.4-1-1000, Abid Road, Hyderabad.

Counsel for the Petitioner: MR.T.SURYA SATISH

Counsel for the Respondent No.1: Smt.M.Venkateswari,

Counsel for Respondent Nos.2 to 4: None appeared.

Counsel for the Respondent No.5: Mr.A.L.Raju

The Court made the following :

C O M M O N O R D E R :

1. Since both the Writ Petitions involve common questions, they have been taken up for disposal together.

2. The petitioners in these two Writ Petitions are brothers. In the first Writ Petition, the petitioner seeks to assail by way of Writ of Mandamus, the impugned sanction dated 12.09.2002 granted by the second respondent, as illegal. In the other Writ Petition, the other brother seeks a Writ of Mandamus declaring action of the respondents 1 to 4 in reshifting water connection from premises bearing No.4-1-1000 to 4-1-1000/C, Abid Road, Hyderabad on 07.06.2003 as illegal and arbitrary and for further direction for restoration of the said connection.

3. The facts which are not in dispute in both the Writ Petitions are that originally the entire premises bearing No.4-1-999 and 4-1-1000, which is known as Taj Mahal Hotel situated in Abids Road, Hyderabad belonged to their father late B.Sunder Rao, who had, in fact, established the said hotel in the year 1950 and developed the same. The total area of the premises extends to 6,020 sq. yards. Subsequent to that, there was a memorandum of understanding among the petitioners, his other brothers and also their mother on 22.12.1998, which was followed by a regular deed of partition, whereunder the petitioner in Writ Petition No.20707 of 2002 was allotted a portion in the premises No.4-1-1000 along with his mother and whereas the petitioner in the other Writ Petition was allotted the other portion in premises No.4-1-1000. Similarly, the other brothers were allotted their respective areas.

4. It is claimed that a notice has been given under Section 208 of the Hyderabad Municipality Corporation Act by the petitioner in W.P.No.11484 of 2003 informing about the said partition and for necessary consequential mutation and recording of their respective names. The dispute in these two Writ Petitions pertains to a water connection, which was admittedly existing prior to the said partition in the portion which is allotted to the petitioner in W.P.No.20707 of 2002.

After the partition, the petitioner in W.P.No.11484 of 2003 has filed an application on 09.09.2002 for shifting the said existing connection to his premises for supply of water. Similarly, another application was filed on 30.09.2002 for permission for cutting road. Accordingly, permission was granted by the Municipal Corporation of Hyderabad on 08.10.2002. At this juncture, Writ Petition No.20707 of 2002 was filed challenging the said permission *inter alia* on various grounds including that there was no notice to him nor there was a warrant for such permission or shifting. However, it is now claimed by the petitioner in W.P.No.11484 of 2003 that on 30.05.2003 the said water connection was shifted to his premises and later on the same was reshifted by disconnecting the same back to the original place on 07.06.2003. Therefore, the grievance of the petitioner in W.P.No.11484 of 2003 is that the impugned action of the respondent on 07.06.2003 is once again without any notice nor there is any warrant for such disconnection or reshifting.

In the meanwhile, the petitioner in W.P.No.20707 of 2002 along with his mother, filed Original Suit No.635 of 2002 on the file of the XVII Junior Civil Judge –cum- Principal Rent Controller, Secunderabad, against the petitioner in the other Writ Petition and also another brother namely B.Ganapathi Rao, seeking for injunction restraining them from demolishing the existing partition wall and causing any interference. It is now represented that the said suit after contest, was ultimately decreed as per the judgment and decree dated 16.07.2004.

5 . Learned counsel for the petitioner in W.P.No.20707 of 2002 submits that having regard to the partition which has been effected under the aforesaid memorandum of understanding wherein every other arrangement has been agreed to and there being no such specific agreement for shifting any existing connection, other share holders have no right to seek any such shifting, and therefore, the entire action on the part of the other brother in applying for shifting and cutting, and having a connection in his allotted portion apart from

being without any notice and opportunity, is wholly unsustainable and illegal.

6. The learned counsel appearing for the petitioner in W.P.No.11484 of 2003 strenuously contended that having acted upon the application filed by the said petitioner and acceded to the request for shifting and cutting and granted permission and further the same having been implemented on 30.05.2003, the disconnection effected on 07.06.2003 and shifting it back to the old place, is also an action without any proper notice and opportunity and further, there is no power vested under the provisions of the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 and the Rules made therein, to make any such reshifting.

7. On considering the submissions made in detail from both the sides and on perusal of the material, the short question which falls for consideration is “on effecting partition between the members of a family, whether any right exists in favour of others to seek any shifting of the existing water connection without there being any such arrangement therein ?”.

8 . Though several aspects are sought to be focused, especially reading out from the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 and the Rules made therein, factually there is no dispute in regard to the fact that there was a partition amongst the members, including both the petitioners herein along with their mother, as per the memorandum of understanding entered into on 22.12.1998, wherein the individual portions have been allotted to individual members including their mother. There is also no dispute that the existing water connection which the petitioner in W.P.No.11484 of 2003 is seeking for reshifting, exists in the portion which is allotted to the petitioner in W.P.No.20707 of 2002. On a

reading of the memorandum of understanding dated 22.12.1998, though there is a provision for all other aspects, but there is no specific permission or condition contained therein in regard to entitlement of any other member of the family who is entitled to water supply from out of the existing connection. There can not be any dispute on the question of law that the supply of water from a water connection from water supply or sewerage board, can not constitute any right of easement nor the same is enforceable as such, more so, when a partition is being effected amongst the members of the family. Necessarily, if any such claim is to be made, it has to be made at the time of partition in the proper place. In the absence of which, the only inference is that the member to whom the other area is allotted where there exists no other water connection, he has to apply for fresh connection and have water supply, without disturbing or making claim over, the existing water connection in the portion of other member to whom it is allotted.

9. Further, the plea that there is no power vested with the Board for reshifting the water connection, would not stand to any reason, more so, when admittedly the petitioner in W.P.No.11484 of 2003 had, in fact, sought for reshifting of an existing water connection which falls in the portion allotted to other petitioner, without his consent and without any notice to him. Therefore, there can not be any justification for complaining as to the absence of any such opportunity being provided while effecting disconnection on 07.06.2003. Admittedly, no notice or opportunity was given to the petitioner in W.P.No.20707 of 2002 on the application filed by the petitioner in W.P.No.11484 of 2003 or at the time of granting any such permission for reshifting the existing water connection. The only action which has been done by the respondents herein on 07.06.2003 is to connect themselves in respect of the error committed by them in straightaway acceding to the request made by the petitioner in W.P.No.11484 of 2003. The power to disconnect or reshift, can always be presumed where there

exists power to connect, which is only incidental one and any action to connect the same, can not be found fault with, more so, in the absence of any right existing with the party. In view of the partition effected between the parties under the aforesaid memorandum of understanding, the petitioner in W.P.No.11484 of 2003 can not be said to have any right, much less, an enforceable one, either with the authorities or with the persons who will be affected thereby.

10. It is also to be taken note of that in view of the alleged acts on the part of the petitioner in W.P.No.11484 of 2003 along with his brother, they have already been restrained by injunction decree in the above mentioned suit filed by the petitioner in W.P.No.20707 of 2002 along with his mother. In the circumstances, I do not find any justification in the claim made by the petitioner in W.P.No.11484 of 2003 and hence, the same is liable to be dismissed.

1 1 . Accordingly, W.P. No.11484 of 2003 is dismissed, and consequently, W.P.No.20707 of 2002 is allowed. No costs.

.09.2004

DRK

Copy to:

1 The Managing Director, Hyderabad Metropolitan
Water Supply & Sewerage Board, Goshamahal, Hyderabad.

2 The Managing Director, Single Window, Hyderabad
Metropolitan Water Supply & Sewerage Board,
Kairatabad, Hyderabad.

3. The Manager (E) O & M, Div-IV, Sultan Bazar, Hyderabad.

4. The General Manager (E) O & M, Div-IV, Red Hills, Hyderabad.

5. Two CD copies.